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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

KIM, TAE K

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2453

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10/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/520,700	Applicant(s) NEUHAUS ET AL.	
	Examiner TAE K. KIM	Art Unit 2453	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12, 15-18, 23-25 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 15-18, 23-25 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to the Applicant's response filed on June 17, 2009. Claims 12, 18, and 25 have been amended by the Applicant. Claim 1 – 11, 13, 14, 19 – 22, and 26 – 28 have been cancelled by the Applicant. Claims 12, 15 – 18, 23 – 25, and 29, where Claims 12, 18, and 25 are in independent form, are presented for examination.

Response to Arguments

Applicant's arguments filed on June 17, 2009 have been fully considered but they are not persuasive. Applicant argued:

- a) Regarding Claim 12, Goodman does not disclose or suggest that some of the multiple communication components have different hardware and software functionalities for performing different functions.
- b) Regarding Claim 12, Goodman does not disclose or suggest of providing to a plurality of components an identical software-controlled communication service that provides a feature to facilitate communication between at least two of the components.
- c) Regarding Claim 12, Goodman does not disclose or suggest of "initiating" the update from a third component when the comparison is made between the said one component and the second of the components.

Examiner respectfully disagrees with applicant's assertions.

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1. With regards to a), the Applicant asserts that each node in the Goodman reference incorporates “the same architecture, hardware, and firmware” and, therefore, the nodes cannot have different hardware and software functionalities. The Applicant has cited a portion of Goodman to support this assertion. However, the Examiner points out that a prior art reference must be considered in its entirety [See MPEP 2141.02, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)].

The Goodman reference clearly shows that the multiple communication nodes (communication components) can have different hardware and software functionalities. Goodman discloses that each node has distinct nodal hardware and each node uses firmware functions specific to the node and ignores those functions specific to other nodes [Col. 3, Lines 40-49, Lines 61-67]. Therefore, the claims are not distinguishable over the prior art of record.

2. With regards to b), the Applicant asserts that Goodman does not provide software-controlled communication services. The examiner points out that the pending claims must be "given the broadest reasonable interpretation consistent with the specification" [In re Prater, 162 USPQ 541 (CCPA 1969)] and "consistent with the interpretation that those skilled in the art would reach" [In re Cortright, 49 USPQ2d 1464 (Fed. Cir. 1999)]. The claim defines the term “communication service” to simply “a feature to facilitate communication between at least two of the components. The claim does not state the communication service is a gateway service or defines a gateway service.

Goodman discloses that each node within the network is provided the same code update routine [Col. 3, Lines 55-61]. The code update routine allows each node in the system to request from the other nodes for their code signatures to determine any other node has a more up-to-date version of the firmware [Fig. 2; Col. 4; Lines 20-67]. The code update routine provides a feature that facilitates communication between at least two of the components. Therefore, the claims are not distinguishable over the prior art of record.

3. With regards to c), the Applicant is again reminded that the entire reference must be considered in its entirety. Goodman discloses that if the code update routine running on one node finds a higher code level at another node, the Location Parameter is updated with the location and firmware level of the node and the Firmware Update Routine will initiate the copying of the higher code from the node identified in the Location Parameter [Figs. 2 and 3; Col. 5, Lines 7-43]. Goodman further discloses that if there is the situation where the same higher code level is found in two or more nodes (second and third components), the logic will retain the location of the first node with the higher code level (third component) [Figs. 2; Col. 5, Lines 7-43]. Therefore, Goodman anticipates that the update can be initiated on a third component if two or more components have the same higher code level. Therefore, the claims are not distinguishable over the prior art of record.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12, 16 – 18, and 23 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,904,457, invented by Brian Gerard Goodman (hereinafter “Goodman”).

1. Regarding Claims 12 and 25, Goodman discloses of a method for updating communication services in a communication network [Fig. 1; Col. 6, Lines 44-60; updating the code update routine within the plurality of processor nodes (communication service)] comprising:

providing multiple communication components [Fig. 1], including a plurality of components having different hardware and software functionalities for performing different functions [Col. 3, Lines 40-49, Lines 61-67; each node has distinct nodal hardware and each node uses firmware functions specific to the node and ignores those functions specific to other nodes], wherein some of the components use or provide the same communication services in the network [Col. 3, Lines 61-67; each node uses the shared functions as well as those firmware functions specific to the node, such as the same code update routine];

providing to a plurality of the components an identical software-controlled communication service that provides a feature to facilitate communication between at least two with a plurality of the components [Col. 3, Lines 55-61; same code update routine is found on the plurality of nodes within the system];

identifying at least some of the components providing the identical software-controlled communication service in the communication network [Fig. 2; Col. 4; Lines

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20-67; each node in the system will request the other nodes for their code signatures to determine any other node has a more up-to-date version of the firmware];

initiating a comparison of information by one of the components to compare release information of software controlling the communication service on each of the identified components when providing the identical software-controlled service [Fig. 2; Col. 5, Lines 7-43; each node that receives signature information will determine whether the code signature indicates that the node providing the code signature includes a newer version than the one currently at the node]; and

initiating a software update for one component when a comparison identifies that the release on said one component is different from the release on a second of the components [Figs. 2 and 3; Col. 5, Lines 7-43; if a higher code level is found at another node, then the Location Parameter is updated with the location and firmware level of the node and the Firmware Update Routine will initiate the copying of the higher code from the node identified in the Location Parameter], wherein software with a more up-to-date release is sent from a third communication component to said one component with an earlier release [Fig. 2; Col. 5, Lines 32-43; in the situation where the same higher code level is found in two or more nodes (second and third components), the logic will retain the location of the first node with the higher code level (third component)].

Goodman further discloses that each node within the network can broadcast its code signature to other nodes to initiate the firmware updating process on the nodes that did not initiate the query [Col. 5, Lines 1-7]. Goodman further discloses that each node request and send higher level firmware to one another if it is determined that a

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higher level firmware exists within the system [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware]. Therefore, each node is a “servent” since they can act like a client by originating queries to another node and can act as a server by providing file information to requesting nodes.

2. Regarding Claim 16, Goodman discloses all the limitations of Claim 12 above. Goodman further discloses that the network includes a packet- switching network [Col. 2, Line 65 - Col. 3, Line 5; communication interface between the nodes can be a differential multidrop LAN, CAN, etc. and also via peer-to-peer connection].

3. Regarding Claim 17, Goodman discloses all the limitations of Claim 12 above. Goodman further discloses that the identical software-controlled service is selected from the group consisting of gateway functionality, voicemail server service, and address server service [Col. 2, Lines 52-65; the nodal system can be used in a variety of application, such as automobiles, household appliances, consumer electronics, including a data storage library; (gateway functionality to access data storage library or household appliance)].

4. Regarding Claim 18, Goodman discloses a method for providing communication services in a communication network [Fig. 1; Col. 6, Lines 44-60; updating the code update routine within the plurality of processor nodes (communication service)], comprising:

providing communication services in a communication network formed of components having different hardware and software functionalities for performing different functions [Col. 3, Lines 40-49, Lines 61-67; each node has distinct nodal hardware and each node uses firmware functions specific to the node and ignores those functions specific to other nodes], with each of multiple ones of the communication components capable of providing an identical software-controlled service [Col. 3, Lines 61-67; each node uses the shared functions as well as those firmware functions specific to the node, such as the same code update routine];

enabling the identical software-controlled service in a first of the communication components [Fig. 2; Col. 5, Lines 7-43; each node that receives signature information will determine whether the code signature indicates that the node providing the code signature includes a newer version than the one currently at the node]; and

activating, or updating software pertaining to, the identical service in a second of the communication components by downloading software pertaining to the identical service sent from a third communication component to the second component [Col. 5, Lines 1-7; one or more nodes may request the code signature (first component) causing the queried node (third component) to broadcast its code signature, and nodes other than the querying node (second component) may receive the code signature broadcast as well as any subsequent broadcast of the higher level of the firmware].

5. Regarding Claim 23, Goodman discloses all the limitations of Claim 18 above. Goodman further discloses that the first communication component initiates updates of software in the second component and in multiple other communication components

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[Col. 5, Lines 1-7; one or more nodes may request the code signature (first component) causing the queried node (third component) to broadcast its code signature, and nodes other than the querying node (second and multiple other components) may receive the code signature broadcast as well as any subsequent broadcast of the higher level of the firmware].

6. Regarding Claim 24, Goodman discloses all the limitations of Claim 18 above. Goodman further discloses that the first communication component in the communication network has been provided with a most up-to-date release for operation thereon and for downloading to other components [Col. 5, Lines 1-7; one or more nodes may request the code signature (first component) causing the queried node to broadcast its code signature, and nodes other than the querying node may receive the code signature broadcast as well as any subsequent broadcast of the higher level of the firmware].

Claims 15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman, in view of U.S. Appl. 2002/0067505, filed by David Salgado et al. (hereinafter "Salgado").

7. Regarding Claims 15 and 29, Goodman discloses all the limitations of Claims 12 and 25 above. Goodman, however, does not specifically disclose that the comparison of release information is repeated at settable time intervals.

Salgado discloses a system and method of updating devices within a network [Para. 0018]. Salgado further discloses that the automatic upgrading of components

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within the network can be performed by a component at certain time intervals, such as once a week [Para. 0018].

It would have been obvious to combine the teachings of Goodman and Salgado by programming the firmware within the Goodman processor nodes with a subroutine to perform the upgrade to the software.

The motivation to do so is to ensure that each component within the network has a new updated version of the firmware without user interaction since the user may not be aware of the new updated firmware [Para. 0007].

Claim 25 is rejected under 35 U.S.C. 102(b) as anticipated by Goodman as stated above or, in the alternative, under 35 U.S.C. 103(a) as obvious over Goodman, in view of U.S. Appl. 2003/0149620, filed by Blaine D. Gaither (hereinafter "Gaither").

8. Regarding Claim 25, Goodman discloses a method for updating a service in a packet-switching communication network [Col. 2, Line 65 - Col. 3, Line 5; communication interface between the nodes can be a differential multidrop LAN, CAN, etc. and also via peer-to-peer connection], comprising:

providing a communication network formed of components having different hardware and software functionalities and performing a plurality of communication services with the components [Col. 3, Lines 40-49, Lines 61-67; each node has distinct nodal hardware and each node uses firmware functions specific to the node and ignores those functions specific to other nodes], including providing an identical software-controlled service on a first communication component and a second communication

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component [Col. 3, Lines 61-67; each node uses the shared functions as well as those firmware functions specific to the node, such as the same code update routine], the components communicating peer-to-peer [Col. 2, Line 65 - Col. 3, Line 5; communication interface between the nodes can be a differential multidrop LAN, CAN, etc. and also via peer-to-peer connection];

initiating a comparison by the first of the components to compare release information of the software controlling the service on at least the second component relative to software controlling the service on at least the first component [Fig. 2; Col. 5, Lines 7-43; each node that receives signature information will determine whether the code signature indicates that the node providing the code signature includes a newer version than the one currently at the node]; and if the releases are different,

identifying a more up-to-date release installed on a third servent communication components [Fig. 2; Col. 5, Lines 32-43; in the situation where the same higher code level is found in two or more nodes (second and third components), the logic will retain the location of the first node with the higher code level (third component)]; and

initiating a software update by downloading the more up-to-date release from said third one of the components to one of the components for which release information has been compared [Figs. 2 and 3; Col. 5, Lines 7-43; if a higher code level is found at another node, then the Location Parameter is updated with the location and firmware level of the node and the Firmware Update Routine will initiate the copying of the higher code from the node identified in the Location Parameter].

Goodman further discloses that each node within the network can broadcast its code signature to other nodes to initiate the firmware updating process on the nodes that did not initiate the query [Col. 5, Lines 1-7]. Goodman further discloses that each node request and send higher level firmware to one another if it is determined that a higher level firmware exists within the system [Fig. 2 and 3; Col. 4, Line 20 - Col. 6, Line 32; once all the nodes are checked and a higher level firmware is found, the firmware update routine is initiated by the reset node to receive the higher level firmware image from the node identified with the higher level firmware].

Goodman, however, does not disclose that each component is a "servent."

Gaither discloses that it is well known in the art at the time of the present invention that every peer (i.e. each node) in a peer-to-peer network is a "servent" when the peer can act as both a client and a server [Para. 0039]. Gaither further discloses that every node acts as a client who originates queries, and a server that provides file information and acts as a router [Para. 0039]. Therefore, the nodes within the Goodman system can be described using the term "servent."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Note: Examiner has cited particular figures, columns, line numbers, and/or paragraphs in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (571) 272-6776. The fax phone

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number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/

Tae K. Kim
Examiner, Art Unit 2453

October 15, 2009

/THUHA T. NGUYEN/
Primary Examiner, Art Unit 2453